

comment on the proposal; and publication of a final rule accompanied by a statement of the rule's basis and purpose. Utility Solid Waste Activities Group v. Environmental Protection Agency, 236 F.3d 749,752 (D. D.C. 2001) *citing* Vermont Yankee Nuclear Power Corp. v. NRDC, **435 U.S.** 519,523-24 (1978). The APA's notice and comment procedures have two purposes: " ' to reintroduce public participation in fairness to affected parties after governmental authority has been delegated to unrepresentative agencies,'" (citations omitted); and to assure that the agency is presented with all information and suggestions relevant to the problem at issue. White v. Shalala, 7 F.3d 296,303 (2d Cir. 1993).

Section 553(b)(A) of the APA, however, carves out an important exception to the rulemaking procedures. Agencies need not follow the prescribed rulemaking process to create "interpretive rules, general statement of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. § 553(b)(A).

Thus, agencies must perform notice-and-comment procedure prior to issuing a legislative rule, but producing a nonlegislative rule requires no such process. **See** 5 U.S.C. § 553. To distinguish whether a rule is nonlegislative or legislative, courts consider whether the rule is "substantive" in nature. Chrysler Corp. v. Brown, 441 U.S. 281,301-02 (1979). Put another way, if a rule has substantive effects, it should have been promulgated as a legislative rule, and therefore the agency should have performed notice-and-comment to create it. Chrysler, 441 U.S. at 301-02; Professionals and Patients for Customized Care v. Shalala, 56 F.3d 592, 595 (5th Cir. 1995) (if a rule is "substantive," the exemption is inapplicable, and the full panoply of notice-and-comment requirements must be adhered to scrupulously).

A legislative rule is substantive if it has a binding, significant and immediate effect on the rights and obligations of the public. Chrysler, 441 U.S. at 301-02; *see also* Avovelles Sportsmen's League, Inc. v. Marsh, 715 F.2d 897,908 (5th Cir.1983) (substantive rules, "grant rights," "impose obligations," "produce other significant effects on private interest," or "have substantial legal effect"); Perales v. Sullivan. M.D., 948 F.2d 1348, 1354 (2d Cir. 1991) (a "substantive regulation" is one which "grant[s] rights, impose[s] obligations, or produce[s] other significant effects on private interest."). Generally speaking, it seems to be established that "regulations," "Substantive rules," or "legislative rules" are those which create law, usually complementary to an existing law. Professionals and Patients for Customized Care, 56 F.3d at 602.¹⁰

The "APA's notice and comment exemptions must be narrowly construed." Professionals and Patients for Customized Care, 56 F.3d at 595. Indeed, a substantive rule promulgated without the requisite notice-and-comment, is unlawful. Id. Community Nutrition Institute, 818 F.2d at 946-49 (invalidating Food and Drug Administration's "action levels" because these rules were produced without notice-and-comment yet applied as law).

¹⁰ Although the APA itself does not define "Substantive rules," "interpretive rules," or "statement of policy," courts over the years have developed a body of jurisprudence that is helpful in drawing the necessary -- but often illusory -- distinctions among the three types of rules. Professionals and Patients for Customized Care, 56 F.3d at 595 *citing* Community Nutrition Institute v. Young, 818 F.2d 943,946 (D.C. Cir. 1987) (recalling that courts and commentators have described the distinction between substantive and interpretive rules or policy statement as, *inter alia*, "tenuous," "fuzzy," "blurred," "baffling," and "and shrouded in considerable smog").

b. Exception for interpretive rules

Nonlegislative rules, on the other hand, lack the binding effect of law and may not create obligations, convey rights, or cause significant effect. Chrysler, 441 U.S. at 301-02. Nonlegislative rules include “interpretive” regulation, which is simply an agency’s “intended course of action, its tentative view of the meaning of a particular statutory term, or internal house-keeping measures organizing agency activities.” Perales, 948 F.2d at 1354 (citations omitted). “Interpretive rules are not intended to alter legal rights, but to state the agency’s view of what existing law requires.” Sekula v. FDIC, 39 F.3d 448, 457 (3d Cir. 1994). Chrysler, 441 U.S. at 302 n. 31, 315-16 (noting that interpretive rules inform the public how an agency interprets the statute or how it administers its substantive rules and that interpretive rules do not create binding law); Alcaraz v. Block, 746 F.2d 593, 613 (9th Cir. 1984) (noting that interpretive rules are essentially hortatory and instructional and they are used more for discretionary fine-tuning than for general lawmaking).

Interpretive rules do not require prior notice to its enactment. Perales v. Sullivan, M.D., 948 F.2d at 1354.

c. Exception for general statements of policy

Nonlegislative rules also include general statements of policy. A general statement of policy is the outcome of neither a rulemaking nor an adjudication; it is neither a rule nor a precedent but is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications. Pacific Gas and Electric Co. v. Federal Power Commission, 506 F.2d 33, 38 (D.C. App. 1974).

The critical distinction between a substantive rule and a general statement of policy is the different practical effect that these two types of pronouncements have on subsequent administrative proceedings. Id. A properly adopted substantive rule establishes a standard of conduct which has the force of law; the underlying policy embodied in the rule is not generally subject to challenge before the agency. Id.

A general statement of policy, on the other hand, does not establish a "binding norm." Id. It is not finally determinative of the issues **or** rights to which it is addressed. Id. The agency cannot apply or rely upon a general statement of policy as law because a general statement of policy only announces what the agency seeks to establish as policy. Id. A policy statement announces the agency's tentative intentions for the **future**. When the agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued. Id. **An** agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy. Id. at 38-39.

d. Exception for agency organization, procedure, or practice

Finally, nonlegislative rules include rules of agency organization, procedure, **or** practice. The APA's Section 553(b)(A) has been described as essentially a "housekeeping" measure, Chrysler Corp. v. Brown, 441 U.S. at 310, "[t]he distinctive purpose of... [which] is to ensure ' that agencies retain latitude in organizing their *internal* operations.'" American Hospital Assn. v. Bowen, 834 F.2d. 1037, 1047 (D.C. Cir. 1987). Where nominally "procedural" rules "encode[] a substantive value judgment" or "substantially alter the rights or interests of regulated" parties, however, the

rules must be preceded by notice and comment. Id. at 1047, 1041; Reeder, 865 F.2d 1298, 1305 (D.C. App. 1989) (*quoting* American Hospital Assn., 834 F.2d at 1047) (The procedural exception to notice and comment "does not apply where the agency "encodes a substantive value judgment").

3. The USAC's One-Year Statute of Limitations for Filing Revised FCC Forms 499-A and 499-Q Are Substantive Rules and Must Be Adopted Pursuant to Notice and Comment Rulemaking to Be Effective

The USAC's one-year statute of limitations for filing revised FCC Forms 499-A and 499-Q clearly is neither an interpretive rule, a general statement of policy, **nor** a rule of agency organization, procedure, or practice. Instead, the USAC's one-year statute of limitations is a substantive rule which must be adopted pursuant to APA notice and comment rulemaking procedures."

The USAC's one-year statute of limitations is obviously not an interpretive rule. The USAC does not inform the public how it interprets any statute or substantive rule or how it administers its substantive rules. Chrysler, 441 U.S. at 302, n. 31, 315-16. The USAC does not remind parties of existing statutory duties, or merely track applicable statutory requirements and thus simply explain something that a statute or substantive rule already requires. Professionals and Patients for Customized Care, 56 F.3d at 602. Moreover, the USAC does not interpret any existing statute of limitations, but instead

¹¹ As shown above, the USAC's statute of limitations for filing revised FCC Forms 499-A and 499-Q is a moving target. Is it one year, as claimed by the **USAC**, or is it a quarter of a year, or **up** to a year and three quarters, depending on the Instructions to FCC Form 499-Q? Regardless of what the deadline actually is, it is substantive and, **thus**, subject to **APA** notice and comment rulemaking procedures to be effective. Because such procedures were wholly disregarded, the statute of limitations, whatever it may actually be, is invalid.

improperly creates one. *cf.* Wohlford v. United States, 823 F. Supp. 386, 391-92 (W.D. Vir. 1992)(FmHA was not required to comply with APA rulemaking procedures when repealing regulations interpreting federal statute of limitations in relation to FmHA because these regulations did not create any additional time limitations for FmHA to bring suit, but rather, expressly addressed 28 U.S.C. § 2415 and explained its application to FmHA's actions). See also Brown Express, Inc. v. United States, 607 F.2d 695, 700 (5th Cir. 1979)(Interstate Commerce Commission's notice of elimination of notification to competing carriers on application for emergency temporary authority was not an interpretive rule because such notice did not purport to interpret any statute or regulation, was not a mere clarification, defined no ambiguous terms and gave no opinion about the meaning of the statute or regulation; instead, **such** notice was a new rule which affected a change in the method used by the Commission in granting substantive rights).

Similarly, the USAC's one-year statute of limitations is not a general statement of policy. By issuing this deadline, the USAC is not providing a statement advising the public, including BDP, prospectively of the manner in which the USAC proposes to exercise its discretionary power. *See Chrysler*, 441 U.S. at 31-02. Also, by subjecting telecommunications providers, including BDP, to the draconian and arbitrary and capricious one-year deadline, the USAC is not merely announcing to the public a policy which it hopes to implement in future rulemaking adjudications. *See Pacific Gas and Electric Co. V. Federal Power Commission*, 506 F.2d at 38. Nor is the USAC announcing motivating factors it will consider, or tentative goals toward which it will aim, in determining the resolution of a substantive question of regulation. *See Professionals and Patients for Customized Care*, 56 F.3d at 601.

Moreover, the USAC's one-year statute of limitations is not a rule of agency organization, procedure, or practice. The USAC cannot, without fully complying with notice and comment rulemaking procedures, adopt a nominally "procedural" rule which "encodes a substantive value judgment" or "substantially alters the rights **or** interests of regulated" parties. *See American Hospital Assn.*, 834 F.2d at 1041.

Additionally, characterizing USAC's statute of limitations as procedural and, thus, exempt from notice and comment rulemaking, would be wholly inconsistent with the federal courts' uniformly treating statute of limitations as substantive for purposes of conflict of laws analysis. Bradley v. National Association of Securities Dealers Dispute Resolution, Inc., 2003 WL 255966 (D.D.C.) at * 2 *citing* Steorts v. Am. Airlines, 647 F.2d 194, 1996-97 (D.C. Cir. 1981) ("Erie clearly mandates that in diversity cases the substantive law of the forum controls with respect to those issues which are outcome-determinative, and it is beyond cavil that statute of limitations are that character."); Cantor Fitzgerald Inc. v. Lutnick, 313 F.3d 704, 710 (2d Cir. 2002) ("[a] state's rules providing for the start and length of the statute of limitations is substantive law."). *citing* Klehr v. A.O. Smith Corp., 87 F.3d 231, 235 (8th Cir. 1996), *aff'd* 521 U.S. 179 (1997); Nevada Power Co. v. Monsanto Co., 955 F.2d 1304, 1306 (9th Cir. 1992).

Instead, the USAC's one-year statute of limitations imposes binding, significant and immediate effects on the rights and obligations of the public, including BDP, and thus, constitutes a substantive rule. *See Chrysler*, 441 **U.S.** at 301-02. Indeed, the Supreme Court determined long ago that a "statute of limitations substantially affects the outcome of litigation. For the purposes of rulemaking authority, statutes of limitation must, therefore, be considered substantive in individual cases." In re "Agent Orange"

Product Liability Litigation, 597 F. Supp. 740, 808 (E.D. N.Y. 1984) *citing* Guarantee Trust Company of New York v. York, 326 U.S. 99 (1945).

Similarly, Judge Posner of the Seventh Circuit acknowledged that statutes of limitations are substantive and require notice and comment rulemaking: "[t]he reason courts refuse to create statutes of limitations is precisely the difficulty of reasoning to a number by the methods of reasoning used by courts... When agencies base rules on arbitrary choices they are legislating, and *so* these rules are legislative or substantive and require notice and comment rulemaking, the procedure that is analogous to the procedure employed by legislatures in making statutes." Hector v. United States Department of Agriculture, 82 F.3d 165, 170-71 (7th Cir. 1986); *see also* Shelton v. United States Steel Corporation, 1987 WL 35499 (S.D. Ohio) ("retroactive application of the statute limitations contained in O.R.C. 4121.80(A) to plaintiff's pending cause of action affects plaintiff's accrued substantive right in his cause of action and does not merely affect a rule of practice or remedy.").

Here, USAC's statute of limitations directly and adversely affects BDP's, as well as other telecommunications carriers', ability to obtain refunds for overpayments in universal service fund contributions and, thus, contains an essential characteristic of a substantive rule. *cf.* St. Francois Health Care Center v. Shalala, 205 F.3d 937 (6th Cir. 2000) *citing* Shalala v. Guernsey Memorial Hospital, 514 U.S. 87, 99 (1995) (characterizing PRM as an interpretive rule, noting that "[t]he rule does not effect new substantive reimbursement standards inconsistent with prior regulations -- the central characteristic of a substantive rule."); *see also* Matthews v. Kidder, Peabody & Company, Inc., 161 F.3d 156, 166 n. 17 (noting that it would be unlikely to apply a statute of

limitations retroactively under Rico so as to bar a plaintiff's claim, as it would likely find that such an amendment affects the substantive rights of the parties and thus is presumed to apply only prospectively); Bums v. Morton, 134 F.3d 109, 111 (3d Cir. 1998) (refusing to apply retrospectively a new statute of limitations in 28 U.S.C. § 2244(d)).

Accordingly, because the USAC's one-year statute of limitations is a substantive rule, the USAC (and the FCC) had to fully comply with APA notice and comment rulemaking procedures in adopting it. The USAC's (and the FCC's) failure to comply with these mandatory procedures renders the one-year statute of limitations invalid and unenforceable. See Professionals and Patients for Customized Care, 56 F.3d at 595; Community Nutrition Institute, 818 F.2d at 946-49.

B. The USAC's One-Year Statute of Limitations for Filing Revised FCC Forms 499-A and 499-Q Exceeds USAC's Authority, Is Arbitrary and Capricious and an Abuse of Discretion

As shown in Section IV 1c, p.9-11, *supra*, the Instructions to Form 499-A provide that "[t]elecommunications providers should file revised Form 499-A revenue data by December 1 of the same filing year. Revisions filed after that must be accompanied by an explanation of the cause for the change along with complete documentation showing how the revised figures derived from corporate financial records." As also shown in Section IV 1c, pp.9-11, *supra*, the FCC delegated authority to make future changes to the Telecommunications Reporting Worksheet to the Chief of the Common Carrier Bureau. The FCC cautioned, however, that "[t]hese delegations extended to administrative aspects of the requirements, e.g., where and when worksheets are filed, incorporating edits to reflect Commission changes to the substance of the mechanisms, and other similar

details." Consolidated Reporting Order, at ¶ 39. Indeed, later in its Consolidated Reporting Order, the FCC "reaffirm[ed] that this delegation extends only to making changes to the administrative aspects of the reporting requirements, not to the substance of the underlying programs." Id. at ¶ 40 (emphasis added); 47 C.F.R. § 50.17(b); 47 C.F.R. § 54.711(c).¹²

As shown above, USAC's one-year statute limitations is not merely a change to the administrative aspects of the reporting requirements, but instead a change to the substance of the underlying universal service fund program. Accordingly, the USAC grossly exceeded its authority and abused its discretion in establishing the one-year statute of limitations-- a substantive rule.

Moreover, the USAC's one-year statute of limitations is arbitrary and capricious and **an** abuse of discretion. The USAC has provided no basis **for** adopting the one-year statute limitations or otherwise shown why the one-year statute is required, particularly when, as shown above, the Instructions to Form 499-A clearly contemplate that telecommunications carriers can file revisions after one year. See Florida Gas Transmission Co. v. FERC, 876 F.2d 42, 45 (5th Cir. 1989) (citing 5 U.S.C. § 706(2) (FERC must provide a reasoned explanation to substantiate a change in policy and this explanation is not to be reversed unless it is arbitrary, capricious, or otherwise not in accordance with law.); Consolidated Bearings Co. v. United States, 166 F. Supp.2d 580,

¹² As shown in Section IV 1d, pp.11-12, *supra*, the Instructions to Form 499-Q require that revised filings be made by the filing date for the subsequent 499 filing. However, **as** demonstrated above, these deadlines were in effect substantive. Thus, because these deadlines were not adopted pursuant to APA notice and comment rulemaking procedures, they are invalid. In any event, as shown above, the Instructions to Form 499-A contain no time limit to file revisions and, thus, all revisions could be made in a revised Form 499-A, as opposed to a Form 499-Q.

590 (CIT 2001) (Commerce's action was arbitrary and capricious and an abuse of discretion in violation of 5 U.S.C. § 706 (2)(A) if Commerce fails to explain the basis for the Liquidation Instructions at issue).

Even more egregious, the USAC's one-year statute of limitations is at odds with the statutory requirements for recovering universal service contributions. Under the statutory requirements, the mechanisms for universal service contributions must be specific, predictable and sufficient, and contributions to the universal service fund must be made on an equitable and non-discriminatory basis. In the Matter of Request for Review by ABC Cellular Coruoration, *supra* at ¶ 10, n. 30 citing 47 U.S.C. § 254. By subjecting BDP to a one-year statute limitations and refusing to allow BDP to file revised Forms 499-A and 4994 to correct prior inaccuracies, the USAC is compelling BDP to pay in excess of \$1 million over the amount it lawfully should have contributed under Section 254 of the 1996 Telecommunications Act. **Thus**, in these circumstances, BDP is compelled to contribute an erroneous amount to support universal service, a result wholly inconsistent with the requirement that universal service **fund** contributions be made on an equitable and non-discriminatory basis. ABC cellular Coruoration, at ¶ 10 ("Absent a waiver, ABC Cellular would be required to contribute an erroneous amount to support universal service, which we believe would be inconsistent with the requirement that contributions be equitable.").¹³

¹³ Notably, in addition to granting the telecommunications provider in ABC Cellular Coruoration a waiver of the revised Form 499-4 deadline, the FCC apparently is presently considering granting other telecommunications providers waivers of the revised Form 499-Q deadline, or has already settled with these carriers. See *e.g.*, In the matter of Request for Review of Decision of Universal Service Administrative Company by GE Business Productivity Solutions, Inc., CC Docket Nos. 96-45 and 97-21, 17 FCC Rcd 19,101 (rel. October 1, 2002); In the Matter of Request for Decision of the Universal

**C. Assuming the USAC Properly Adopted the Deadlines for Filing
Revisions to Forms 499-A and 499-Q, BDP Has Demonstrated
Good Cause for the FCC to Waive These Deadlines**

Assuming the USAC properly adopted the deadlines for file revisions to Forms 499-A and 499-Q, as shown above BDP has demonstrated good cause for the FCC to waive these deadlines. Specifically, BDP showed it had timely filed its FCC Forms from 1998 through 2001. On August 5, 2002, BDP filed amended FCC Forms for these years immediately after discovering through an audit conducted by BDP's independent auditors that it had overstated its revenues and overpaid the USAC by \$1,016,738.43. BDP further explained that its original FCC Forms had significantly overstated BDP's gross revenues because they were based upon incorrect gross revenue information supplied to BDP by BIC, BDP's billing Company. Specifically, BIC failed to properly reduce BDP's revenues by deducting substantial adjustments and credits to BDP's customer billing. BDP included with its revised Forms an analysis showing the exact amount BDP owed for universal service fund contributions for the years ending December 31, 1998, 1999, 2000 and 2001. BDP's analysis accompanying the revised FCC Forms show that it had overpaid the USAC \$1,016,738.43 in universal service fund contributions.

Service Administration Company by Griggs County Telephone Company, cc Docket Nos. 96-45 and 97-21, 17 FCC Rcd 16,058 (rel. August 21, 2002); In the Matter of Request for Review of Decision of the Universal Service Administration Company by Crown Communications, Inc., cc Docket Nos. 96-45 and 97-21, 17 FCC Rcd 22,570 (rel. Nov. 8, 2002); In the Matter of Request for Review of Decision of the Universal Service Administration Company by Moms Communications, Inc., cc Docket Nos. 96-45 and 97-21, 17 FCC Rcd 15,690 (rel. Nov. 8, 2002). The FCC's willingness to grant such waivers demonstrates that its revised Form filing deadlines are policies, not rules, which the FCC applies in an arbitrary and capricious manner in direct contravention of § 254's mandate that contributions be equitable and non-discriminatory.

In these circumstances, BDP has demonstrated good cause for the FCC to waive any deadline for filing revised FCC Forms 499-A and 499-Q. As noted above, the FCC has granted waivers to telecommunications providers in similar situations, reasoning that absent a waiver, the telecommunications provider would be required to contribute an erroneous amount to support universal service, a result contrary to the requirement that contributions be equitable." See In the Matter of Request for Review by ABC Cellular Corporation, supra at ¶ 10.

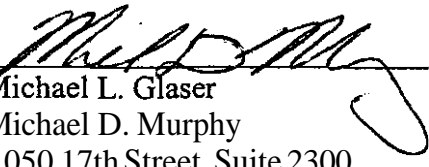
Accordingly, the FCC should grant BDP a waiver of the filing deadline and allow BDP to file its revised FCC forms for 1998 through 2001.

VI. STATEMENT OF THE RELIEF SOUGHT

BDP respectfully requests that the FCC reverse the Decision, accept BDP's amended FCC Forms 457, 499-A, 499-S, and 499-Q, and accompanying Telecommunications Reporting Worksheets, for the years ended December 31, 1998, 1999, 2000 and 2001, which BDP filed on August 5, 2002. BDP further requests that the FCC refund BDP the \$1,016,738.43 it overpaid USAC in universal service fund contributions, as reflected by BDP's amended FCC Forms and accompanying Telecommunications Reporting Worksheets. BDP also respectfully requests that the FCC pay BDP interest at the statutory rate specified in 26 U.S.C. § 6621(a)(1)(B) on the amount BDP overpaid in universal service fund contributions from the date of these contributions to the time the FCC *makes* such refund.

DATED this 28th **day** of February, 2003.

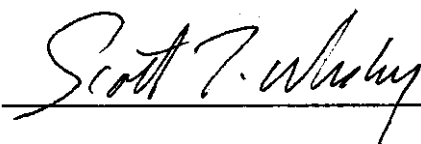
SHUGHART THOMSON & KILROY, P.C.

By: 
Michael L. Glaser
Michael D. Murphy
1050 17th Street, Suite 2300
Denver, CO 80265
303.572.9300
303.572-7883 fax

CERTIFICATE OF MAILING

The undersigned hereby certifies that on this 28th day of February, 2003, a true and correct copy of the foregoing **was** served via overnight mail, postage prepaid, addressed as **follows**:

Letter of Appeal
Universal Service Administration Company
2120 L. Street N.W., Suite 600
Washington, D.C. 20037



A

AFFIDAVIT OF CRAIG KONRAD

I, Craig Konrad, the affiant, do hereby state and affirm, **as** follows:

1. I ~~am~~ the person responsible for the day-to-day operations of Business Discount Plan, Inc. ("BDP"). The following is true of my own personal knowledge, and if called as a witness, I could and would testify competently thereto.
2. BDP timely filed its FCC Forms 457,499-A, 499-S and 499-4, ~~with~~ accompanying worksheets (Telecommunications Reporting Worksheets), reporting its revenues for the years ended December 31, 1998; December 31, 1999; December 31, 2000; and December 31, 2001.
3. In the end of July 2002, BDP discovered, through an audit conducted by its independent auditors, that it had overstated its revenues, and thus overpaid the Universal Service Administrative Co. ("UCAC") by \$1,016,738.43 in the period 1998 through 2001. On August 5, 2002, BDP, promptly after discovering that it had overstated its revenues, filed amended FCC Forms 457,499-A, 499-S, and 499-4, and accompanying Telecommunications Reporting Worksheets, for the years ended December 31, 1998, December 31, 1999, December 31, 2000 and December 31 2001.
4. In its transmittal letter enclosing the revised Forms, BDP explained that its original above-referenced Forms had significantly overstated BDP's gross revenues for these above-referenced periods. BDP further explained that these significant overstatements were mistakenly based upon incorrect gross revenue information supplied to BDP by Billing Information Concepts, Inc. ("BIC"), BDP's billing aggregator responsible for the billing of BDP's long distance service. Specifically, BDP explained that in July 2002, its independent auditors, Gene Query & Associates, had completed an

audit of BDP's unrelated excise and sales tax for the years in question. Upon completion of this audit, BDP's auditors discovered that the revenue reports BIC had supplied BDP for 1998 through 2001 failed to appropriately reduce BDP's revenues by deducting substantial adjustments and credits to BDP's customer billings to which BDP was entitled. In explaining the error, BDP included with its revised FCC Forms and accompanying Telecommunications Reporting Worksheets a complete analysis of the exact amount BDP had owed for the years 1998 through 2001. This analysis showed that BDP had overpaid the USAC \$1,016,738.43. A true and correct copy of Gene Query & Associates' August 5, 2002 letter to Amended Returns Telecommunications Reports Section Form 499 c/o NECA, together with attachments, is attached hereto as Attachment 1.

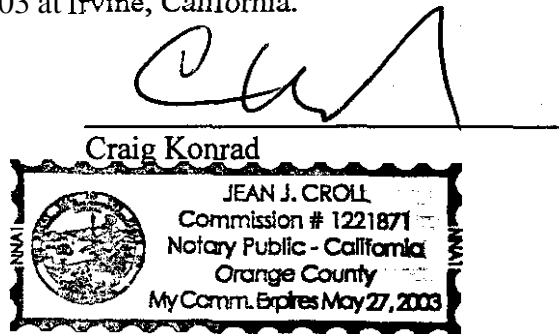
FURTHER AFFIANT SAYETH NOT.

DATED this 27th day of February, 2003 at Irvine, California.

STATE OF CALIFORNIA)

COUNTY OF ORANGE)

) SS
)



The foregoing instrument was acknowledged before me this 27th day of February, 2003, by Craig Konrad.

(SEAL)

Jean J. Croll
Notary Public
My commission expires: May 27, 2003



& ASSOCIATES

GENE QUERRY

AN ACCOUNTANCY CORPORATION

August 5, 2002

Attn: Amended Returns Telecommunication Reports Section
Form 499c/o NECA
80 South Jefferson Road
Whippany, NJ 07981

Re: Explanation of Reasons for Multi-Year Amendment (1998 through 2000) of BDP
USF Telecommunication Reports.

To Whom It May Concern:

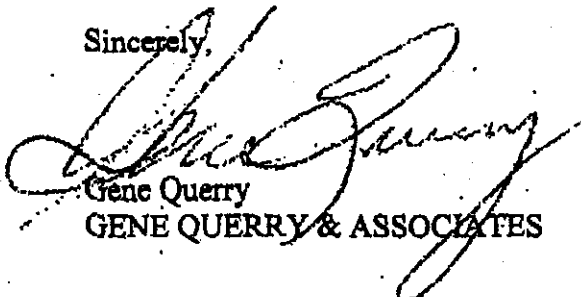
Enclosed with this letter is Amended FCC Form 489-A Returns for Business Discount Plan, Inc. (BDP) for the calendar years 1998, 1999, and 2000 ("Amended Returns"). These three (3) Amended Returns are being filed due to the fact that we have discovered that the original returns filed for 1998, 1999, and 2000 have significantly overstated the company's gross revenue for the tax periods.

The original 499-A Returns filed by BDP for 1998, 1999, and 2000 were based on incorrect gross revenue information supplied to BDP by Billing Information Concepts, Inc. (BIC). BIC is a billing aggregator responsible for the billing and management for BDP's long distance service. As a part of its contractual obligation, BIC provides BDP with the revenue information to be reported on the FCC Form 499-A Returns.

As a result of various unrelated excise and sales tax audits, BDP management and we realized that the revenue reports supplied to BDP by BIC did not appropriately reduce BDP revenue by deducting substantial adjustments and credits to BDP customer billing. Therefore, BDP management is hereby submitting the attached Amended Returns to correctly report BDP's revenue and tax obligations for 1998, 1999, and 2000. We have attached a schedule providing detail on the actual revenue, the reported revenue, the amounts paid, and the adjustments necessary to the company's USF account.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact our office at (714) 523-3970 from 8:00 AM to 6:00 PM (Pacific Standard Time).

Sincerely,



Gene Querry
GENE QUERRY & ASSOCIATES

BUSINESS DISCOUNT PLAN INC
UNIVERSAL SERVICE FUND
Preliminary & Tentative Refund Schedule

Payment Date	Check Num	Using Revenue Reporting Period	Month Paid	Contribution Factor	ORIGINAL		NET	CUMMULATIVE
					Payment Amount	Tax Payment Amount	Estimated Refund (Payment)	Estimated Refund (Payment)
1/4/2002	21124	Apr - Jun 01	Oct-01	0.069187	-	54,871.47	(54,871.47)	975,152.04
			Nov-01	0.069187	-	54,871.47	(54,871.47)	920,280.57
)	0.069187	34,728.57	54,871.47	(20,142.90)	900,137.67
					\$ 34,728.57	\$ 164,614.40	\$ (129,885.83)	
2/8/2002	21316	Jul - Sept 01	Jan-02	0.068088	96,966.71	52,851.18	44,115.53	944,253.20
3/13/2002	21499		Feb-02	0.068086	96,966.71	52,851.18	44,115.53	988,368.74
4/12/2002	21661		Mar-02	0.068086	96,966.71	52,851.18	44,115.53	1,032,484.27
					\$ 290,900.13	\$ 158,553.54	\$ 132,346.59	
5/15/2002	21771	Oct - Dec 01	Apr-02	0.072805	154,625.17	48,889.60	105,735.57	1,138,219.84
6/17/2002	21864		May-02	0.072805	153,433.34	48,889.60	104,543.74	1,242,763.58
			Jun-02	0.072805		48,889.60	(48,889.60)	1,193,873.99
					f 308,058.51	\$ 146,668.79	\$ 161,389.72	
TOTAL								

Estimated refund f 1,193,873.99
Jan-Jun 02 pmo credit (177,135.56)

\$ 1,016,738.43

BUSINESS DISCOUNT PLAN INC
UNIVERSAL SERVICE FUND
Preliminary & Tentative Refund Schedule

Payment Date	Check Num	Using Revenue Reporting Period	Month Paid	Contribution Factor	ORIGINAL	Tax	NET	CUMMULATIVE
					Payment Amount	Payment Amount	Estimated Refund (Payment)	Estimated Refund (Payment)
2/19/1999	10622	Jan-Jun 98	Jan-99	0.005800	609,261.31	485,581.07	123,680.24	123,680.24
3/12/1999	10949		Feb-99	0.005800	609,413.63	485,581.07	123,832.56	247,512.80
4/9/1999	11257		Mar-99	0.005800	\$ 9	\$ 1	123,680.24	371,193.03
					\$ 7	\$ 3	\$ 371,193.03	
5/14/1999	11763	Jan-Jun 98	Apr-99	0.005700	587,191.30	468,141.67	119,049.63	490,242.67
6/11/1999	12137		May-99	0.005700	581,191.30	468,141.67	119,049.63	609,292.30
7/14/1999	12546		Jun-99	0.005700	587,338.09	468,141.67	119,196.42	1
					\$ 1,761,720.69	\$ 404,425.00	\$	
8/12/1999	12838	Jul-Dec 98	Jul-99	0.009900	262,448.59	221,983.69	40,464.90	768,953.63
9/15/1999	13245		Aug-99	0.009900	257,448.59	221,983.69	35,464.90	804,418.54
10/13/1999	13592		Sep-99	0.009900	257,512.95	221,983.69	35,529.26	1,178.80
					\$ 777,410.13	\$ 665,951.06	\$ 111,459.07	
11/12/1999	13979	Jul-Dec 98	Oct-99	0.058995	267,034.87	227,422.03	39,612.84	879,560.64
12/11/1999	14385		Nov-99	0.058995	323,205.36	298,753.61	24,451.75	904,012.39
12/31/1999	14704		Dec-99	0.058995	323,205.36	3.61	24,451.7	928,464.1
					\$ 913,445.59	\$ 9	\$ 3	
2/11/2000	15165	Jan-Jun 99	Jan-00	0.058770	235,749.75	246,070.32	(10,320.57)	918,143.56
3/10/2000	15456		Feb-00	0.058770	235,749.75	246,070.32	(10,320.57)	907,822.99
4/12/2000	15897		Mar-00	0.058770	235,749.75	1	(10,320.57)	897,502.41
					\$ 707,249.25	\$ 1	\$ (30,961.72)	
5/11/2000	16222	Jan-Jun 99	Apr-00	0.057101	229,231.55	239,082.21	(9,850.66)	887,651.75
6/9/2000	16666		May-00	0.057101	229,054.73	239,082.21	(10,027.48)	877,624.27
7/12/2000	16990		Jun-00	0.057101	229,054.73	239,082.21	(10,027.48)	867,596.79
					\$ 687,341.01	\$ 717,246.63	\$ (29,905.62)	
8/9/2000	17308	Jul-Dec 99	Jul-00	0.055360	214,697.89	163,334.98	51,362.91	918,959.71
9/13/2000	17649		Aug-00	0.055360	214,697.89	163,334.98	51,362.91	970,322.62
10/13/2000	17929		Sep-00	0.055360	1	8	5 1 91	1,021,685.54
					\$	\$ 3	\$ 1 74	
11/3/2000	18128	Jul-Dec 99	Oct-00	0.056688	219,848.15	167,253.13	52,595.02	1,074,280.56
12/8/2000	18368		Nov-00	0.056688	219,848.15	167,253.13	52,595.02	1,126,875.58
1/12/2001	18683		Dec-00	0.056688	219,848.15	167,253.13	52,595.02	1,179,470.60
					\$ 659,544.45	\$ 501,759.38	\$ 157,785.07	
2/9/2001	18984	Jan-Jun 00	Jan-01	0.066827	164,536.80	152,906.10	11,630.70	1,191,101.30
3/9/2001	19153		Feb-01	0.066827	163,801.46	152,906.10	10,895.36	1,201,996.65
4/11/2001	19423		Mar-01	0.066827	163,801.46	152,906.10	10,895.36	
					\$ 492,139.72	\$ 458,718.31	\$ 33,421.41	
5/11/2001	19689	Jan-Jun 00	Apr-01	0.068823	168,693.90	157,473.13	11,220.77	1,224,112.78
6/15/2001	19920		May-01	0.068823	67,846.81	157,473.13	(89,626.32)	1,134,486.46
7/13/2001	20117		Jun-01	0.068823	104,724.13	157,473.13	2	1,081,737.46
					\$ 341,264.84	\$ 472,419.39	\$ 1	
8/10/2001	20256	Jan-Mar 01	Jul-01	0.068941	138,411.29	63,375.08	75.03621	1,156,773.67
			Aug-01	0.068941		63,375.08	(63,375.08)	1,093,398.59
			Sep-01	0.068941		63,375.08	(63,375.08)	
					\$	\$ 190,125.24	\$ (51,713.95)	

BUSINESS DISCOUNT PLAN INC
UNIVERSAL SERVICE FUND
Preliminary & Tentative Refund Schedule

Payment Date	Check Num	Using Revenue Reporting Period	Month Paid	Contribution Factor	ORIGINAL		NET	CUMMULATIVE
		Payment Amount			Tax Payment Amount	Estimated Refund (Payment)	Estimated Refund (Payment)	
1/4/2002	21124	Apr - Jun 01	Oct-01	0.069187	-	54,871.47	(54,871.47)	975,152.04
			Nov-01	0.069187	-	54,871.47	(54,871.47)	920,280.57
			Dec-01	0.069187	34,728.57	54,871.47	(20,142.90)	900,137.67
				\$ 34,728.57	\$ 164,614.40	\$ (129,885.83)		
2/8/2002	21316	Jul - Sept 01	Jan-02	0.068086	96,966.71	52,851.18	44,115.53	944,253.20
3/13/2002	21499		Feb-02	0.068086	96,966.71	52,851.18	44,115.53	988,368.74
4/12/2002	21661		Mar-02	0.068086	96,966.71	52,851.18	44,115.53	1,032,484.27
				\$ 290,900.13	\$ 158,553.54	\$ 132,346.59		
5/15/2002	21771	Oct - Dec 01	Apr-02	0.072805	154,625.17	48,889.60	105,735.57	1,138,219.84
6/17/2002	21864		May-02	0.072805	153,433.34	48,889.60	104,543.74	1,242,763.58
			Jun-02	0.072805	-	48,889.60	(48,889.60)	1,193,873.99
				\$ 308,058.51	\$ 146,668.79	\$ 161,389.72		
TOTAL								

Estimated refund \$ 1,193,873.99
Jan-Jun 02 pmts credit (177,135.56)
\$ 1,016,738.43

BUSINESS
DISCOUNT
PLAN

UNIVERSAL SERVICE FUND

REFUND SCHEDULE

1998-2001

BUSINESS DISCOUNT PLAN INC
UNIVERSAL SERVICE FUND
Preliminary & Tentative Refund Schedule

Payment Date	Check Num	Using Revenue Reporting Period	Month Paid	Contribution Factor	ORIGINAL	REVISED	NET	CUMMULATIVE
					Payment Amount	Tax Payment Amount	Estimated Refund (Payment)	Estimated Refund (Payment)
2/19/1999	10622	Jan-Jun 98	Jan-99	0.005800	609261.31	485,581.07	123,680.24	123,680.24
3/12/1999	10949		Feb-99	0.005800	609,413.63	485,581.07	123,832.56	247,512.80
4/9/1999	11257		Mar-99	0.005800	609261.31	485,581.07	123,680.24	371,193.03
					\$ 1,827,936.25	\$ 1,456,743.22	\$ 371,193.03	
5/14/1999	11763	Jan-Jun 98	Apr-99	0.005700	587,191.30	468,141.67	119,049.63	490,242.67
6/11/1999	12137		May-99	0.005700	587,191.30	468,141.67	119,049.63	609,292.30
7/14/1999	12546		Jun-99	0.005700	587,338.09	468,141.67	119,196.42	728,488.73
					\$ 1,761,720.69	\$ 1,404,425.00	\$ 357,295.69	
8/12/1999	12838	Jul-Dec 98	Jul-99	0.009900	262,448.59	221,983.69	40,464.90	768,953.63
9/15/1999	13245		Aug-99	0.009900	257,448.59	221,983.69	35,464.90	804,418.54
10/13/1999	13592		Sep-99	0.009900	257,512.95	221,983.69	35,529.26	839,947.80
					\$ 777,410.13	\$ 665,951.06	\$ 111,459.07	
11/12/1999	13979	Jul-Dec 98	Oct-99	0.058995	267,034.87	227,422.03	39,612.84	879,560.64
12/11/1999	14385		Nov-99	0.058995	323205.36	298,753.61	24,451.75	904,012.39
12/31/1999	14704		Dec-99	0.058595	323205.36	298,753.61	24,451.75	928,464.13
					\$ 913,445.59	\$ 824,929.26	\$ 88,516.33	
2/11/2000	15165	Jan-Jun 99	Jan-00	0.058770	235,749.75	246,070.32	(10,320.57)	918,143.56
3/10/2000	15456		Feb-00	0.058770	235,749.75	246,070.32	(10,320.57)	907,822.99
4/12/2000	15897		Mar-00	0.058770	235,749.75	246,070.32	(10,320.57)	897,502.41
					\$ 707,249.25	\$ 738,210.97	\$ (30,961.72)	
5/11/2000	16222	Jan-Jun 99	Apr-00	0.057101	229231.55	239,082.21	(9,850.66)	887,651.75
6/9/2000	16666		May-00	0.057101	229,054.73	239,082.21	(10,027.48)	877,624.27
7/12/2000	16990		Jun-00	0.057101	229,054.73	239,082.21	(10,027.48)	867,596.79
					\$ 687,341.01	\$ 717,246.63	\$ (29,905.62)	
8/9/2000	17308	Jul-Dec 99	Jul-00	0.055360	214,697.89	163,334.98	51,362.91	918,959.71
9/13/2000	17649		Aug-00	0.055360	214,697.89	163,334.98	51,362.91	970,322.62
10/13/2000	17929		Sep-00	0.055360	214,697.89	163,334.98	51,362.91	1,021,685.54
					\$ 644,093.67	\$ 490,004.93	\$ 154,088.74	
11/3/2000	18128	Jul-Dec 99	Oct-00	0.056688	219,848.15	167,253.13	52,595.02	1,074,280.56
12/8/2000	18368		Nov-00	0.056688	219,848.15	167,253.13	52,595.02	1,126,875.58
1/12/2001	18683		Dec-00	0.056688	219,848.15	167,253.13	52,595.02	1,179,470.60
					\$ 659,544.45	\$ 501,759.38	\$ 157,785.07	
2/9/2001	18984	Jan-Jun 00	Jan-01	0.066827	164,536.80	152,906.10	11,630.70	1,191,101.30
3/9/2001	19153		Feb-01	0.066827	163,801.46	152,906.10	10,895.36	1,201,996.65
4/11/2001	19423		Mar-01	0.066827	163,801.46	152,906.10	10,895.36	1,212,892.01
					\$ 492,139.72	\$ 458,718.31	\$ 33,421.41	
5/11/2001	19689	Jan-Jun 00	Apr-01	0.068823	168,693.90	157,473.13	11,220.77	1,224,112.78
6/15/2001	19920		May-01	0.068823	67,846.81	157,473.13	(89,626.32)	1,134,486.46
7/13/2001	20117		Jun-01	0.068823	64,724.13	157,473.13	(92,749.00)	1,041,737.46
					\$ 41,264.84	\$ 472,419.39	\$ (131,154.55)	
8/10/2001	20256	Jan-Mar 01	Jul-01	0.068941	138,411.29	63,375.08	75,036.21	1,156,773.67
			Aug-01	0.068941		63,375.08	(63,375.08)	1,093,398.59
			Sep-01	0.068941		63,375.08	(63,375.08)	1,030,023.51
					\$ 138,411.29	\$ 190,125.24	\$ (51,713.95)	

BUSINESS DISCOUNT PLAN INC
UNIVERSAL SERVICE FUND
Preliminary & Tentative Refund Schedule

Using Revenue Reporting Period					ORIGINAL	REVISED	NET	CUMMULATIVE
Payment Date	Check Num		Month Paid	Contribution Factor	Payment Amount	Tax Payment Amount	Estimated Refund (Payment)	Estimated Refund (Payment)
1/4/2002	21124	Apr - Jun 01	Oct-01	0.069187	-	54,871.47	(54,871.47)	975,152.04
			Nov-01	0.069187	-	54,871.47	(54,871.47)	920,280.57
			Dec-01	0.069187	34,728.57	54,871.47	(20,142.90)	900,137.67
				\$ 34,728.57	\$ 164,614.40	\$ (129,885.83)		
2/8/2002	21316	Jul - Sept 01	Jan-02	0.068086	96,966.71	52,851.18	44,115.53	944,253.20
3/13/2002	22499		Feb-02	0.068086	96,966.71	52,851.18	44,115.53	988,368.74
4/12/2002	21661		Mar-02	0.068086	96,966.71	52,851.18	44,115.53	1,032,484.27
				\$ 290,900.13	\$ 158,553.54	\$ 132,346.59		
5/15/2002	21771	Oct - Dec 01	Apr-02	0.072805	154,625.17	48,889.60	105,735.57	1,138,219.84
6/17/2002	21864		May-02	0.072805	153,433.34	48,889.60	104,543.74	1,242,763.58
			Jun-02	0.072805	-	48,889.60	(48,889.60)	1,193,873.99
				\$ 308,058.51	\$ 146,668.79	\$ 161,389.72		
TOTAL								

Estimated refund \$ 1,193,873.99
Jan-Jun 02 pmts credit (177,135.56)

\$ 1,016,738.43

NOTE: PAYMENTS DUE MONTHLY IN A GIVEN QUARTER ARE BASED ON THE PRIOR YEAR MONTHS SEMI-ANNUAL REPORTING PERIOD. THE USE FACTOR (RATE) IS CHANGED QUARTERLY ON A CALENDAR YEAR BASIS. AN ANNUAL REPORT IS FILED FOR THE SAME REPORTING PERIOD AS COVERED IN THE PRIOR 2 SEMI-ANNUAL REPORTING PERIOD.

NOTE: ALISON STATES THAT SHE FILED A REPORT IN 9/98 FOR THE PERIOD 1/98 THROUGH 6/98 AND WAS BILLED BY USF LATER AND BEGAN MAKING PAYMENTS IN 2/99 FOR 1/98.

REVENUES SUBJECT TO UNIVERSAL SERVICE FUND INCLUDE INTERSTATE & INTERNATIONAL CALL REVENUES.

NOT SURE IF JAN 98 REVENUES SUBJECT TO USF PAYMENT?

IS USF SUBJECT TO SALES TAX? No, excluded from sales tax

WHAT IS THE STATUTE OF LIMITATIONS IF ANY FOR USF PAYMENTS?

WHAT LIBRARIES DID PREVIOUS USF PAYMENTS INCLUDE? ALL? Per Allison all libraries

W:\GQA\GQA Customer Folders\BDF\Universal Service Fund Refund\Amended return wo sales tax deducted\

**BUSINESS
DISCOUNT
PLAN**

**UNIVERSAL SERVICE FUND
AMENDED RETURNS**

1.99.8-200.1